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Los Angeles Superior
Court, case no.
BC465659

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	11-6208-MRP-MANx	Date	October 12, 2011
Title	Federated Investment Management Company et al. v. Countrywide Financial Corporation et al.		

Present: The Honorable	MARIANA R. PFAELZER	
Cynthia Salyer	None	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.
Attorneys Present for Plaintiff:	Attorneys Present for Defendant:	
None	None	

Proceedings: (In Chambers)

ORDER GRANTING PLAINTIFFS' MOTION TO REMAND

Plaintiffs filed a Motion to Remand this action to state court on August 24, 2011. ECF No. 50. The Court hereby **GRANTS** that Motion. Plaintiffs' complaint includes causes of action under Sections 11, 12(a)(2), and 15 of the Securities Act. ¶¶ 323–53. The Court has dismissed similar Securities Act claims as untimely. *See, e.g., Maine State Ret. Sys. v. Countrywide Fin. Corp.*, 722 F. Supp. 2d 1157 (C.D. Cal. 2010). However, the Court's *Maine State* decision was not one compelled by clear and binding Ninth Circuit precedent. Absent such clear and binding precedent, the Court cannot conclude that "there is *absolutely no possibility* that the plaintiff will be able to establish a cause of action [] in state court." *Asurmendi v. Tyco Elec. Corp.*, No. 08-5699 JF (PVT), 2009 WL 650386, at *2 (N.D. Cal. Mar. 11, 2009) (italics in original) (quoting *Cavallini v. State Farm Mut. Auto Ins. Co.*, 44 F.3d 256, 259 (5th Cir.1995)). Defendants have not established that the Securities Act claims were "so baseless . . . as to constitute a fraudulent attempt to defeat the jurisdiction of the federal court." *Peoples Nat. Bank v. Darling*, No. 91-1052-K, 1991 WL 45716, at *2 (D. Kan. Apr. 1, 1999) (quoting *Farmers' Bank & Trust Co. v. Atchison, T. & S.F. Ry. Co.*, 25 F.2d 23, 29 (8th Cir. 1928)). Because the Securities Act claims are not fraudulently joined, removal was improper under Section 22. 15 U.S.C. § 77(v)(a).

The hearing set for October 28, 2011 at 1:30 p.m. is hereby vacated and this case is ordered remanded to state court.

IT IS SO ORDERED.